

## Article 17.

### Miscellaneous Provisions.

#### **§ 62-350. (See Editor's note) Regulation of pole attachments.**

(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, as amended, shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration. Any fees due from a communications service provider accessing or attaching to poles, ducts, or conduits under this section must be billed by separate invoice and shall not be bundled with charges for electric service.

(b) Following receipt of a request from a communications service provider, a municipality or membership corporation shall negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits that it owns or controls. Following a request from a party to an existing agreement made pursuant to the terms of the agreement or made within 120 days prior to or following the end of the term of the agreement, the communications service provider and the municipality or membership corporation which is a party to that agreement shall negotiate concerning the rates, terms, and conditions for the continued use of or attachment to the poles, ducts, or conduits owned or controlled by one of the parties to the agreement. The negotiations shall include matters customary to such negotiations, including a fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement, or repair of installed facilities for safety reasons. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The parties shall identify with specificity in their respective filings the issues in dispute. The Commission, in its discretion, may consider any evidence or rate-making methodologies offered or proposed by the parties and shall resolve any dispute identified in the filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions. The Commission shall apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the proceeding, whichever is earlier. If the new

rate is for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to initiating any proceedings under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any proceeding brought under this subsection, the Commission may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended.

(d) In the absence of an agreement between an attaching party and the involved municipality or membership corporation that provides otherwise, the following shall apply:

- (1) When the lines, equipment, or attachments of a communications service provider that are attached to the poles, ducts, or conduits of a municipality or membership corporation do not comply with applicable safety rules and regulations set forth in subsection (a) of this section, the municipality or membership corporation may provide written notice of the noncompliant lines, equipment, or attachments, and make demand that the communications service provider bring such lines, equipment, and attachments into compliance with the specified safety rules and regulations. Within the 60-day period following the date of the notice and demand, the communications service provider shall either contest the notice of noncompliance in writing or bring its lines, equipment, and attachments into compliance with the specified applicable safety rules and regulations. If the work required to bring the facilities into compliance is not reasonably capable of being completed within the 60-day period, the period for compliance shall be extended as may be deemed reasonable under the circumstances so long as the communications service provider promptly commences and diligently pursues within the 60-day period such actions as are reasonably necessary to cause the facilities to be brought into compliance.
- (2) When the communications service provider or, if applicable, another responsible attaching party fails to bring any noncompliant lines, equipment, or attachments into compliance (i) within the 60-day period following the date of notice and demand pursuant to subdivision (1) of this subsection, or (ii) within 120 days following the date of notice and demand when the period is extended pursuant to subdivision (1) of this subsection, the municipality or membership corporation shall be entitled to take such remedial actions as are reasonably necessary to bring the lines, equipment, and attachments of the communications service provider into compliance, including removal of the lines, equipment, or attachments should removal be required to achieve compliance with the applicable safety rules and regulations.
- (3) A municipality or membership corporation that removes or brings into compliance the noncompliant lines, equipment, or attachments of a communications service provider pursuant to subdivision (2) of this subsection shall be entitled to recover its reasonable and actual costs for such activities from the communications service provider or other attaching party whose action or inaction caused the noncompliance, and the responsible

attaching party shall reimburse the municipality or membership corporation within 45 days of being billed for such costs.

- (4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may initiate proceedings to resolve any dispute before the Commission. The Commission shall have exclusive jurisdiction over proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The Commission shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property.

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(f) The Commission may adopt such rules as it deems necessary to exercise its responsibility to adjudicate any disputes arising under this section.

(g) Nothing herein shall preclude a party from bringing civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits of a municipality or membership corporation.

(h) As part of final adjudication, the Commission may assess the costs, not to exceed ten thousand dollars (\$10,000), of adjudicating a dispute under this section against the parties to the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive Director of the Public Staff deems it necessary to hire expert witnesses or other individuals with professional expertise to assist the Public Staff in the dispute proceeding, the Commission may assess such additional costs incurred by the Public Staff by allocating such costs against the parties to the dispute proceeding. (2009-278, s. 1; 2015-119, ss. 1-5.)